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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

NO. 79-6027

ORIGINAL COPY

RAYMOND WOOD, EDNA ALLEN,
AND JAMES TANTE,

Petitioners,

v.

THE STATE OF GEORGIA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

RESPONSE FOR THE PETITIONERS

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The question presented and the statement of the case are substantially correct.

Respondent fails to mention in the Statement of the Facts that one of the conditions of the probation is not to violate the law. When petitioners' appeals all became final they left their employment which was working in an adult theater and an adult bookstore. To continue to work there would subject any one of the three petitioners to being arrested, and then their probation might have been revoked. Since Mrs. Allen could not work in the theater due to this probation, the owner fired her before she quit so she could collect unemployment insurance. The reason the respondent gives is that it was done for the purpose of having a reduced ability to pay the fines. (B-4) This is absurd. She had to quit or get fired.

Also when all three petitioners were found guilty by a jury the trial judge was well aware of their limited financial resources. Obviously, the State was in hopes that

the owner of the businesses would pay the fine and therefore urged the imposition of a large fine. Respondent argues that the silence of the petitioners misled the Court. (B-4). This is absurd. The Court was fully aware of the situation.

Counsel admitted in the revocation hearings that the owner had previously agreed to pay the fines. When the owner didn't pay the fines, the State moved to revoke the probation. All three petitioners called counsel to represent them at the hearings. Counsel merely showed the trial judge that the three petitioners had quit the adult business and had no money. Any agreement between them and the owner was not legally enforceable under Georgia law. If there was any conflict between counsel, who had represented the owner and the petitioners, it was clearly waived by the petitioners.

Respondent argues at page 5 of his brief that petitioners Tante and Wood never complained that they could not pay their fines. This is absurd. The Court was fully aware of their financial position at the time of sentencing. The large fines were imposed at the urging of the prosecutor in the hopes the owner would pay the fines.

Also all three petitioners told the probation officer that they did not have the money when they went on probation in October of 1978.

The three petitioners testified that they had no funds to pay their fines in November and December. The State did not dispute their lack of financial resources. Respondent now claims they should have asked for a modification of their fines. The judge, prosecutor, and the probation officer knew the petitioners' financial condition. The petitioners were never really expected to pay the fines.

Respondent at page nine argues that the petitioners did not act in good faith, and were less than candid with the Court. At page ten the respondent argues that they should have made an effort to make a partial payment. The petitioners

were revoked not for failing to make partial payments, but for failing to make monthly payments as directed which is $500 per month. The petitioners are actually scapegoats and they are being punished because the State could not or did not prosecute the owner of the adult businesses. The trial judge never relied on the silence of the petitioners. Respondent repeatedly goes outside the record claiming the petitioners have not been fully honest. This couldn't be further from the truth. The record in both jury trials reflect that the petitioners were employed as a clerk, projectionist, and ticket taker. How could the Court be misled as to their financial abilities.

CONCLUSION

Petitioners'probation was revoked on the sole ground that they failed to pay $500 per month as directed by the Court. This was an impossible condition to meet. The petitioners have obeyed all other rules of probation with the exception of paying their fines. The Court and the prosecutor knew the petitioners were employees earning a nominal salary. They were required to leave their jobs because of probation. Petitioners informed their probation officer that they had no funds to pay $500 per month. Counsel informed the trial judge of these facts and asked that the fines be remitted. Petitioners have done all they can to satisfy probation with the exception of paying their fines. To place them in jail for not having $500 per month is to punish them for their poverty or lack of financial resources. The sentence of the petitioners turns solely upon the amount of money he has. See Griffin v. Illinois, 351 U. S. 12, 19 (1956).

The State seems to want to punish the petitioners because their former employer has reneged on an agreement that is unenforceable in Court. This type of thinking is deplorable, and it makes no sense to extract a prison term from an individual who has been a law abiding citizen. That is exactly

what probation is supposed to accomplish. To withdraw probation knowing the petitioners never had the money in the first place is toying with their freedom.

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CERTIFICATE OF SERVICE

I, Glenn Zell, Attorney for Petitioners, certify I served a copy of the foregoing Response For The Petitioners on John W. Dunsmore, Jr., 132 State Judicial Bldg., 40 Capitol Square, S. W., Atlanta, Georgia 30334 by placing same in a properly addressed envelope and depositing it with the United States Postal Service with adequate postage affixed thereto.

This 24 day of April, 1980.

GLENN ZELL